



Board of Administration

Agenda Item 9a3

November 15, 2018

Item Name: Corrected Proposed Decision – In the Matter of the Appeal Regarding the Final Compensation Calculation of MARK L. WHEELER, Respondent, and LOS ANGELES COUNTY, Respondent.

In the Matter of the Appeal Regarding the Final Compensation Calculation of THOMAS A. VALDEZ, Respondent, and LOS ANGELES COUNTY, Respondent.

In the Matter of the Appeal Regarding the Final Compensation Calculation of JOHN M. LOPEZ, Respondent, and LOS ANGELES COUNTY, Respondent.

In the Matter of the Appeal Regarding the Final Compensation Calculation of LARRY D. BLACKWELL, Respondent, and LOS ANGELES COUNTY, Respondent.

In the Matter of the Appeal Regarding the Final Compensation Calculation of GARRY G. COHOE, Respondent, and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should decline to adopt the Corrected Proposed Decision.

Respondents Mark L. Wheeler (Wheeler), John M. Lopez (Lopez), Larry D. Blackwell (Blackwell), Gary G. Cohoe (Cohoe) and Thomas Valdez (Valdez) (collectively Respondents) positions are included in Attachment C, if any.

Respondent Los Angeles County's (Respondent County) position is included in Attachment C, if any.

Respondent San Bernardino County Transportation Authority's (Respondent SBCTA) position is included in Attachment C, if any.

Strategic Plan

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

Procedural Summary

Respondents established membership with CalPERS based on their prior employment with CalPERS' contracting agencies. Respondents, through employment with Respondent County (Wheeler, Lopez, Blackwell, and Valdez) and Respondent SBCTA (Cohoe), became members of county retirement systems that entered into reciprocal agreements with CalPERS. Respondents retained CalPERS membership during their employment with Respondent County and Respondent SBCTA, and each of them concurrently retired with CalPERS and their respective county retirement systems (Los Angeles County Employees' Retirement Association (LACERA) and San Bernardino County Employees' Retirement Association (SBCERA)). Respondents have been receiving their retirement allowances from the date of their retirements.

CalPERS reviewed Respondents' final compensations as reported by Respondent County and Respondent SBCTA and determined that some of the reported income did not comply with the Public Employees' Retirement Law. Consequently, CalPERS issued separate determinations to each of the Respondents outlining which items of compensation should not be included in their final compensation for purposes of determining their CalPERS' retirement allowance, even though LACERA and SBCERA counted these items in calculating Respondents' final compensations. Respondents separately submitted appeals of CalPERS' final compensation determinations. The matters were consolidated.

The consolidated matter was heard by the Office of Administrative Hearings on April 11, 2018. Due to Respondent County and Respondent SBCTA's failures to appear, the case proceeded as a default under Government Code section 11520 as to those parties only. A Corrected Proposed Decision was issued on September 13, 2018, granting Respondents' appeals. The Corrected Proposed Decision was issued to correct the date the post-hearing telephonic hearing took place.

The Proposed Decision held Respondents' CalPERS retirement benefits shall be based on the compensation figures provided to CalPERS by the county retirement systems.

Alternatives

A. For use if the Board decides to adopt the Corrected Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Corrected Proposed Decision dated September 13, 2018, concerning the Respondents' appeals; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

B. For use if the Board decides not to adopt the Corrected Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Corrected Proposed Decision dated September 13, 2018, concerning Respondents' appeals, hereby rejects the Corrected Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented

by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

- C. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Corrected Proposed Decision dated September 13, 2018, concerning Respondents' appeals, hereby rejects the Corrected Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

- D. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning Respondents' appeals, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning Respondents' appeals.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Corrected Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondents' Argument

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support